UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RASEAN COBLE,

Petitioner,

v.

DAVID ROCK,

Respondent.

12-cv-6587 (NSR) (PED)

ORDER ADOPTING REPORT AND RECOMMENDATION

NELSON S. ROMÁN, United States District Judge

Before the Court is Magistrate Judge Paul E. Davidson's Report and Recommendation ("R & R"), dated August 9, 2013, on petitioner Rasean Coble's petition for a writ of *habeas corpus*, pursuant to 28 U.S.C. § 2254, from his December 8, 2009, conviction entered in County Court, Rockland County. Judge Davidson recommended the Court deny the petition. For the following reasons, the Court adopts the R & R as the opinion of the Court, and denies the petition.

Background[1]

On December 8, 2009, after a jury trial, Petitioner was found guilty of the crimes of robbery in the first degree and robbery in the second degree. At sentencing on February 9, 2010, Petitioner was sentenced to fourteen years in prison, five years post-release supervision, a three-hundred and twenty-five-dollar surcharge, a fifty-dollar DNA fee, and a DNA sample for the crime of robbery in the first degree, and five years in prison and five years post-release supervision for the crime of robbery in the second degree.

Petitioner appealed his conviction to the New York State Appellate Division, Second

[1] Facts are taken from the R & R, unless otherwise noted.

Department on the grounds that (1) the court erred in allowing identification evidence because of an unduly suggestive photographic array and unreliable witness identification, (2) there was insufficient evidence to support the conviction and the conviction was against the weight of the evidence, and (3) Petitioner's sentence was harsh and excessive. The Appellate Division, Second Department confirmed Petitioner's conviction in a written decision on May 10, 2011. *People v. Coble*, 922 N.Y.S.2d 558 (App. Div. 2011). Petitioner's leave to appeal to the New York Court of Appeals was denied on August 12, 2011. *People v. Coble*, 954 N.E.2d 94 (N.Y. 2011). On August 28, 2012 Petitioner filed a petition seeking a federal writ of *habeas corpus*, raising the same grounds as set forth on appeal.

On August 9, 2013, Judge Davidson issued the R & R recommending this court deny the petition for a writ of *habeas corpus*. Neither party has filed written objections to the R & R.

Discussion

A magistrate judge may "hear a pretrial matter [that is] dispositive of a claim or defense" if so designated by a district court. Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1)(B). Where a magistrate judge issues a report and recommendation,

> [w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings or recommendations as provided by rules of court. *A judge of the court shall made a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.* A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b) (emphasis added); *accord* Fed. R. Civ. P. 72(b)(2), (3). However, the district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); *accord Feehan v. Feehan*, No. 09 Civ. 7016 (DAB), 2011 WL 497776, at *1 (S.D.N.Y. Feb. 10, 2011); *see also* Fed. R. Civ. P. 72 advisory committee note (1983 Addition, Subdivision

(b)) ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Here, as neither party objected to Judge Davison's R & R, the Court reviews the recommendation for clear error. The Court has reviewed Judge Davidson's R & R and finds no error, clear or otherwise.

Conclusion

Accordingly, the Court adopts Magistrate Judge Davidson's Report & Recommendation in its entirety. The petition for a writ of habeas corpus is, therefore, DENIED. The Clerk is instructed to enter judgment accordingly and close this case.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

Dated: Sept 20th, 2013
White Plains, New York

SO ORDERED:

9/20/13

NELSON S. ROMÁN
United States District Judge